

CONTAINS INFORMATION DESIGNATED AS  
CONFIDENTIAL -- RIAA  
AND SUBJECT TO THE PROTECTIVE ORDER

Before the  
LIBRARY OF CONGRESS  
COPYRIGHT OFFICE  
Washington, D.C.

In the Matter of	)	
	)	
Statutory License Terms and	)	
Rates for Certain	)	
Digital Subscription	)	Docket No. 96-5
Transmissions of Sound	)	CARP DSTR
Recordings	)	
_____	)	

DMX INC.'S RESPONSE TO RIAA'S FIRST REQUEST FOR DOCUMENTS

Pursuant to the Rules of the Copyright Office, 37 C.F.R. § 251.45(c), and the August 2, 1996, Notice of the Copyright Office, 61 Fed. Reg. 40464, DMX Inc. ("DMX") hereby responds to the Recording Industry Association of America's ("RIAA's") October 3, 1996 request for documents.

PRELIMINARY STATEMENT

The following responses are made solely for the purpose of this copyright arbitration proceeding. Each response is subject to all objections as to competence, relevance, privilege, materiality, propriety, admissibility and any and all other objections and grounds that would require the exclusion of any statement contained herein if any requests were asked of, or if any statements contained herein were made by, or if any documents referenced herein were offered by, a witness present and testifying at the hearing in this proceeding, all of which objections are reserved and may be interposed at the time of hearing.

The following responses are based upon information and documents presently known to be within DMX's custody, possession, or control. No incidental or implied admissions are intended hereby. The fact that DMX has not answered or objected to any discovery request or part thereof is not an admission that DMX accepts or admits the existence of any facts or documents set forth in or assumed by such discovery request or that such answer or objection constitutes admissible evidence. The fact that DMX has responded to any discovery request is not intended and shall not be construed as a waiver by DMX of all or any part of any objection to any discovery request.

Unless otherwise agreed between or among the parties, DMX will produce documents for inspection and copying at the office of McDermott, Will & Emery, 1850 K Street, N.W., Suite 500, Washington, D.C. 20006, and all copying costs shall be paid by RIAA at standard rates.

DMX has made a good faith effort within the time available to search for and produce responsive documents. It is possible that additional responsive documents later will be discovered. DMX therefore reserves the right to supplement or amend its responses, and thereafter to produce additional responsive documents, in as timely a manner as possible.

#### GENERAL OBJECTIONS

1. DMX objects to RIAA's Instructions to the extent that they purport to require a response beyond the requirements of the Rules of the Copyright Office and the Copyright Office Orders issued in this proceeding.

2. DMX objects to RIAA's sixty-five separate document requests on the grounds that, in the aggregate, they are oppressive and unduly burdensome.

3. DMX objects to requests by RIAA for "all" documents as overly broad and unduly burdensome and oppressive. Unless the request identifies specific documents, DMX will produce or identify documents sufficient to show the information requested.

4. DMX objects to RIAA's document requests to the extent that they purport to require production of documents which are not in DMX's possession, custody, or control.

5. DMX assumes that RIAA intends the document request to reference the testimony of Jerold H. Rubinstein; there is no person testifying on behalf of DMX by the name of Jerold H. Rubenstein.

6. Certain observations and statements set forth in the testimony of witnesses for DMX are based on the knowledge, experience and expertise of the witness, or on knowledge gleaned from public information and articles in trade publications in general. In such cases, the witness' testimony may not be based on specific information from particular documents, and so DMX may not have specific responsive documents that contain or reference such information. DMX may produce exemplars of such publicly available documents, if readily available, but such production does not imply that those particular documents were relied upon by the witness in reaching the beliefs and conclusions set forth in the testimony.

Subject to the preceding general objections and any specific objections set forth below, DMX responds to RIAA's October 3, 1996 Requests for Documents as follows:

REQUESTED DOCUMENTS

Jerold H. Rubinstein

1. Page 7, ¶ 16: Mr. Rubinstein states that: "The cable service operator then pays DMX a per subscriber fee." Please provide all documents that support that statement, including, but not limited to, all the agreements between DMX and such cable operator affiliates.

RESPONSE: DMX will produce for inspection and copying copies of agreements between DMX and cable service operators that carry the DMX service.

2. Page 8, ¶ 17: Mr. Rubinstein states that: "The second delivery method, for the vast majority of DMX subscribers, is through the DBS system operated by Primestar Partners, L.P." Please provide all documents showing or containing a breakdown by delivery method of DMX subscribers.

RESPONSE: Responsive documents will be produced. This information is set forth in Exhibit 14 [RESTRICTED]. Additional information concerning DMX subscribers is included in Exhibits 5-7.

3. Page 11, ¶ 26: Mr. Rubinstein states that: "Because of competitive pressures and the trend toward offering subscription music services as part of basic cable or DBS service, DMX expects that the penetration of DMX as a premium service will slow or potentially decline." Please provide all documents (a) in which that "expect[ation]" is contained and (b) that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such competition.

RESPONSE: Responsive documents will be produced. Additional responsive documents already have been produced, including Exhibits 4-9, 14, 30(e)-(g).

4. Page 11, ¶ 27: Mr. Rubinstein states that: "DMX has been able to reach a larger subscriber base of approximately 1.2 million residential subscribers through its recent agreement to offer DMX as part of the basic PrimeStar DBS service." Please provide a copy of that "recent agreement."

RESPONSE: DMX will produce for inspection and copying a copy of the agreement between DMX and PrimeStar Partners LP.

5. Page 11, ¶ 27: Mr. Rubinstein states that: "DMX anticipates that the available subscriber base through DBS will increase in the near future." Please provide all documents that support this statement, including, but not limited to, all documents in which that "anticipat[ion]" is contained and all market analyses and projections and business plans containing an analysis of the availability of DBS and PrimeStar service:

RESPONSE: DMX incorporates herein by reference its General Objection 6.

6. Page 11, ¶ 28: Mr. Rubinstein states that: "DMX believes that number will not increase significantly in view of the many digital services available (e.g., DirectTV) that include audio in their product offering." Please provide all documents that support this statement, including, but not limited to, those that contain DMX's "belie[f]" and all market analyses and projections and business plans containing an analysis of the effect of competition on DMX Direct.

RESPONSE: DMX refers RIAA to Exhibits 4-9, Exhibit 14 [RESTRICTED]. Exhibit 30(g) and to General Objection 6.

7. Page 11 ¶ 31: Mr. Rubinstein states that: "Affiliation between cable and satellite signal distributors and a particular digital audio subscription service generally involves a long-term commitment." Please provide all documents that support this statement, including, but not limited to, all affiliation agreements between DMX and cable and satellite signal distributors.

RESPONSE: DMX will produce for inspection and copying copies of its affiliation agreements with cable and satellite signal distributors.

8. Page 14, ¶ 36: Mr. Rubinstein states that: "These programming factors show how DMX and other subscription services can be instrumental in creating and expanding markets for recorded music, and in promoting sales of particular recordings and of the catalog of recordings performed by particular artists." Please provide all documents that support this

statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such factors on the sale of sound recordings.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

9. Page 16, ¶ 40: Mr. Rubinstein states that: "Although issues of home taping have been resolved by Congress in the Audio Home Recording Act of 1992, DMX does not promote consumer home taping." Please provide all documents that support this statement, including, but not limited to, analyses, reports, and studies that address whether and to what extent DMX subscribers engage in home taping of sound recordings performed by DMX.

RESPONSE: DMX incorporates herein by reference its General Objection 6. Evidence that DMX does not promote home taping is found in Exhibits 2, 3, 10, 16 and 36.

10. Page 16, ¶ 41: Mr. Rubinstein states that: "As a start-up business in a new industry, DMX was required to invest heavily to bring the business to market and to continue to upgrade and expand the service and affiliation base. Among the principal costs to DMX have been the acquisition of technology, research and development, and property and equipment, including particularly studio equipment, computer systems, music library, furniture and office equipment. Total investments in DMX, from inception to the present, exceed \$100 million." Please provide all documents that support this statement, including, but not limited to, financial statements containing a description of the investments made and the particular costs described in this statement.

RESPONSE: Documents responsive to this request have been produced as Exhibits 4-9 and 30(a).

11. Page 17, ¶ 42: Mr. Rubinstein states that: "Under an agreement between ICT and the licensor, Fredricksen & Shu Laboratories, Inc. ("FSLI"), ICT was obligated to fund the development of the technology. Prior to the launch of the DMX service, ICT paid FSLI approximately \$550,000 in compensation, consisting of cash payments of \$131,118 and shares of ICT common stock valued at \$428,000." Please provide all documents that support this statement, including, but not limited to, the agreement between ICT and FSLI.

RESPONSE: A copy of the agreement will be produced. Other documents responsive to this request have been produced as Exhibits 4-8.

12. Page 17, ¶ 43: Mr. Rubinstein states that: "In 1990, ICT entered into an agreement with Scientific-Atlanta, Inc. ("S-A") to enhance and further develop the FSLI DM technology." Please provide that agreement.

RESPONSE: A copy of the agreement will be produced.

13. Page 17, ¶ 43: Mr. Rubinstein states that: "ICT also contracted with S-A to develop and produce the DM2000 digital receiver for the DMX music signal." Please provide that contract.

RESPONSE: A copy of the contract will be produced.

14. Page 17, ¶ 43: Mr. Rubinstein states that: "In consideration of the development of the transmission and reception technology, DMX has agreed to pay fees to S-A from 1991 through August 1996." Please provide all documents that support this statement, including, but not limited to, the final agreements with S-A detailing the information described in this statement.

RESPONSE: A copy of the agreement will be produced.

Documents responsive to this request have been produced as Exhibits 4-8 and 18 [RESTRICTED].

15. Page 18, ¶ 45: Please provide all underlying documentation used to create Exhibit 20, entitled "DMX Offices/Monthly Rent".

RESPONSE: DMX will produce a document identifying the location of its offices. DMX objects to producing office lease agreements as not reasonably calculated to lead to the discovery of relevant evidence, burdensome and harassing.

16. Page 19, ¶ 47a: Mr. Rubinstein states that: "DMX pays WTCI a monthly subleasing fee, and an additional monthly management fee. DMX also pays a monthly uplinking fee for U.S. domestic C-Band transmission services." Please provide all documents that support this statement, including, but not limited to, all agreements between DMX and WTCI and underlying documents used to create Exhibit 22.

RESPONSE: A copy of the agreement will be produced.

17. Page 19, ¶ 47b: Mr. Rubinstein states that: "DMX pays WTCI a monthly fee for this sublease, which includes WTCI's transponder costs plus a management fee. DMX also pays a monthly uplinking fee for U.S. domestic Ku-Band transmission services." Please provide all documents that support this statement,

including, but not limited to, all agreements between DMX and WTCI and underlying documentation used to create Exhibit 22.

RESPONSE: A copy of the agreement will be produced.

18. Page 19-20, ¶ 48: Mr. Rubinstein states that: "DMX's sales and marketing activities for residential markets consists primarily of providing appropriate materials to the cable or DBS providers and general advertising to promote the DMX name and service. . . . Since 1988, DMX has spent close to \$35 million on sales and marketing expenses." Please provide all documents that support this statement, including underlying documents used to create Exhibit 17.

RESPONSE: Responsive documents have been produced as Exhibits 4-9.

19. Page 19, ¶ 49: Please provide all underlying documents used to create Exhibit 23.

RESPONSE: DMX believes that it has no responsive documents.

20. Page 19, ¶ 49: Mr. Rubinstein states that: "DMX pays to Dolby a license fee for incorporation of this technology." Please provide all documents that support this statement, including, but not limited to, underlying documents used to create Exhibit 18, entitled "DMX Inc. Schedule of Technology Costs."

RESPONSE: Responsive documents will be produced.

21. Page 21, ¶ 53: Mr. Rubinstein states that: "In recent months, management has taken steps to reduce operating expenses and capital spending in order to extend working capital, including cutbacks in general and administrative expenses and the operation of DMX subsidiaries." Please provide all documents that support this statement, including, but not limited to, all documents that detail DMX's reduction of operating expenses and capital spending.

RESPONSE: DMX will produce a summary document responsive to this request. Other responsive documents have been produced as Exhibit 9 and 21 [CONFIDENTIAL RIAA].

22. Page 22, ¶ 54: Mr. Rubinstein states that: "As shown on Exhibit 29, total operating losses of DMX through June 30, 1996 exceed \$120 million, of which approximately \$82 million is from residential operations." Please provide all documents that support this statement, including, but not limited to, underlying documents used to create Exhibit 29 (other than DMX's 10-K).



RESPONSE: Responsive documents have been produced as Exhibits 4-9.

23. Page 22, ¶ 55: Please provide all underlying documentation used to create Exhibit 14 (other than DMX's 10-K).

RESPONSE: Responsive documents have been produced as Exhibits 4-9 and Exhibits 24-28 [RESTRICTED].

24. Page 22, ¶ 56: Mr. Rubinstein states that: "Subscriber revenues generally are paid to DMX by cable and DBS systems under affiliation agreements . . . DMX receives from the cable service operator a monthly fee per subscriber to the DMX premium service." Please provide all such affiliation agreements.

RESPONSE: Copies of such affiliation agreements will be produced.

25. Page 23, ¶ 56b: Mr. Rubinstein states that: "For DBS subscriptions through the PrimeStar system, DMX currently is paid a small fee per month per subscriber. After the earlier of September 30, 1997, or the date when PrimeStar converts to a higher-power satellite, PrimeStar will offer up to 30 DMX channels as a basic service and will slightly increase the fee paid to DMX per month per subscriber. When PrimeStar becomes available on a higher-powered satellite, PrimeStar also will offer a premium DMX service of at least 30 channels and pay DMX approximately the same per subscriber fee as is paid by cable service operators offering the DMX premium service. The agreement remains in effect through January 25, 2001, unless terminated sooner." Please provide all documents that support this statement, including all agreements between DMX and PrimeStar containing provisions regarding payments to DMX as described in these statements.

RESPONSE: Responsive documents will be produced.

26. Page 24, ¶ 58: Mr. Rubinstein states that: "In marketing the DMX service to cable suppliers, ICT suggested that approximately half of this monthly fee would be used to amortize the supplier's hardware investment (which would be captured after about two and one-half years). The other half of the monthly fee would be split between the cable supplier and DMX, such that DMX would receive about \$2.50 per subscriber per month." Please provide all documents containing that "suggest[ion]" and all other documents supporting these statements.

RESPONSE: Responsive documents will be produced.

27. Page 24, ¶ 58: Mr. Rubinstein states that: "At that rate, DMX had projected that it might reach a break-even point with between 500,000-700,000 residential premium cable

subscriptions, anticipating a revenue stream from domestic residential subscribers of approximately \$20 million." Please provide all documents that support these statements, including those containing DMX's "project[ion]" and "anticipati[on]."

RESPONSE: DMX incorporates herein by reference its General Objection 6.

28. Page 24, ¶ 59: Mr. Rubinstein states that: "Competitive pressures and rapid changes in the overall marketplace portend that premium subscription revenues may decline in the future." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such competition.

RESPONSE: Responsive documents will be produced. DMX incorporates herein by reference its General Objection 6.

29. Page 25, ¶ 60: Mr. Rubinstein states that: "the potential 'basic cable' remuneration to a subscription service for basic service is exponentially lower than the 'premium' rate." Please provide all documents supporting this statement.

RESPONSE: Responsive documents will be produced.

30. Page 25, ¶ 62: Mr. Rubinstein states that: "DMX anticipates that in the near future, the price of monthly DBS service will continue to decline." Please provide all documents that support this statement, including, but not limited to, those in which this "anticipat[ion]" is contained, and all market analyses and projections and business plans containing an analysis of the effect of such competition.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

31. Page 26, ¶ 63: Mr. Rubinstein states that: "This [HITS] new service, we believe, will provide strong competition to DBS in terms of channel capacity and quality." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such competition.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

32. Page 26, ¶ 63: Mr. Rubinstein states that: "the service will require a new generation of digital cable set-top receivers. This may increase the cost of the service to the consumer as well as to the cable service. Therefore, while HITS

may increase DMX subscribership, it is likely that the bulk of these subscribers will be at the 'basic' level, as is the case with DBS, and that most of these subscribers will not be 'new' subscribers to cable; they predominantly will be existing subscribers who trade in their current analog cable television receiving equipment and subscription for a better digital system." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such new technology.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

33. Page 26, ¶ 64: Mr. Rubinstein stated that: "In the near future, services currently offered via cable or DBS services will be offered via cable or DBS services will be offered by what previously were considered to be 'telephone companies' and via electronic telecommunications networks such as the Internet. These additional modes of delivery will again exert competitive pressure on the marketplace and will likely result in erosion of the initial 'premium service' concept of DMX and digital subscription services generally." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such competition.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

34. Page 27, ¶ 65: Mr. Rubinstein states that: "The advent of digital audio radio broadcasting is further anticipated to exert competitive pressures on license fees that digital subscription services receive from cable suppliers." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of the effect of such competition.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

35. Page 27-28, ¶ 67: Please provide all documents supporting the statements in this paragraph, including, but not limited to, all market analyses and projections and business plans.

RESPONSE: DMX incorporates herein its responses to Requests 26-34.

36. Page 28, ¶ 68: Mr. Rubinstein states that: "In sum, the total number of subscribers to DMX will increase, but because

that increase will come almost exclusively in 'basic' service (and at the expense of 'premium' services) the average revenue per subscriber will substantially decrease. . . . As a result, the 'break-even' point for residential subscription revenues remains elusive." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans and the underlying documents used to create Exhibit 30(g).

RESPONSE: DMX incorporates herein its responses to Requests 26-35. Documents responsive to this request have been produced as Exhibit 14 [CONFIDENTIAL RIAA] and Exhibit 30(d).

37. Page 29, ¶ 72: Mr. Rubinstein states that: "A modest royalty fee imposed at this point would inflate the net operating losses of DMX and postpone DMX's ability to break even, or reach profitability. A substantial royalty fee would threaten the eventual success of DMX and, potentially, could destroy the viability of DMX or the subscription music business in general." Please provide all documents that support this statement, including, but not limited to, all documents containing an analysis of the effect of royalty rates on "DMX and the subscription music business."

RESPONSE: DMX incorporates herein by reference its General Objection 6, and its response to Request 36.

38. Page 30, ¶ 74: Please provide all documents detailing the affect on the prices described in paragraph 74 once the equipment and hardware are amortized after three years.

RESPONSE: DMX currently believes that it has no documents responsive to this request.

39. Page 31, ¶ 77: Mr. Rubinstein states that: "Statistics and experience show that the market for pay television is slowly expanding. As a result cable services cannot easily expand their subscriber bases in order to increase revenues. Cable systems have reached the limits of geographic expansion in the domestic market." Please provide all documents that support this statement, including, but not limited to, those that contain such "statistics and experience."

RESPONSE: DMX incorporates herein by reference its General Objection 6.

40. Page 31, ¶ 77: Mr. Rubinstein states that: "Surveys indicate that many consumers would switch from cable to satellite service if the costs were more competitive. With the recent plunge in prices of DBS hardware and service, the economic

pressures on the MSO and DBS services are intensifying. For example, TCI -- DMX's primary affiliate and the largest single investor in DMX -- recently announced significant losses and, in response, new efforts to cut all possible costs as much as five percent across the board." Please provide all documents supporting this statement, including, but not limited to, such surveys.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

41. Page 31-32, ¶ 79: Mr. Rubinstein states that: "Certain of DMX's affiliation agreements may permit cost of living adjustments or possible adjustments in response to cost increases." Please provide all documents supporting this statement, including, but not limited to, those affiliation agreements.

RESPONSE: Responsive documents will be produced.

42. Page 32, ¶ 80: Mr. Rubinstein states that: "The MSOs and DBS operators consistently have rejected requests by DMX to increase fees." Please provide all documents that support this statement, including, but not limited to, all correspondence with MSOs and DBS concerning pricing of DMX.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

43. Page 32, ¶ 81: Mr. Rubinstein states that: "DMX has insufficient leverage to increase prices, and believes it will be unable to pass on the costs of the sound recording performance royalties by raising fees." Please provide all documents that support this statement, including, but not limited to, all market analyses and projections and business plans containing an analysis of DMX's or any other the subscription digital audio services' ability in general to raise prices in the future.

RESPONSE: Responsive documents will be produced. DMX incorporates herein by reference its General Objection 6.

44. Page 33, ¶ 85: Mr. Rubinstein states that: "The impact of digital subscription services in promoting sales of sound recordings is beginning to be felt, and the potential promotional impact is extremely promising." Please provide all documents that support this statement.

RESPONSE: Responsive documents have been produced as Exhibits 31-34 and 36. DMX incorporates herein by reference its General Objection 6.

45. Page 33, ¶ 85: Mr. Rubinstein states that: "The promotional potential of DMX has been acknowledged to me by record company executives, including executive of Time-Warner and Sony Music who, for a period of months, negotiated to invest in DMX." Please provide all documents that support this statement, including, but not limited to, those containing such acknowledgments.

RESPONSE: Responsive documents have been produced as Exhibits 31-34 and 36. DMX incorporates herein by reference its General Objection 6.

46. Page 34, ¶ 86: Mr. Rubinstein states that: "The audience for DMX, particularly for the DMX premium service, is more interested in music than the typical consumer." Please provide all documents that support this statement, including, but not limited to, all consumer surveys.

RESPONSE: Responsive documents will be produced. DMX incorporates herein by reference its General Objection 6.

47. Page 34, ¶ 87: Mr. Rubinstein states that: "DMX has received many testimonials and listener comments indicating that DMX subscribers purchased recordings by artists that they first heard on DMX channels and learned of via the DMX DJ Remote." Please provide all such "testimonials" and "listener comments."

RESPONSE: DMX incorporates herein by reference its General Objection 6.

48. Page 34, ¶ 87: Mr. Rubinstein states that: "The general response of callers to the DMX 800 telephone comment line has been that those who were significant purchasers of recorded music before acquiring the DMX service have actually increased their purchasing since acquiring DMX -- often substantially." Please provide all documents that support this statement, including, but not limited to, all those that describe the "general response" of callers.

RESPONSE: DMX incorporates herein by reference its General Objection 6.

49. Page 35, ¶ 88: Mr. Rubinstein states that: "Overwhelmingly, consumers order the DMX DJ Remote over the less functional alternative remote, and purchase the DMX DJ Remote twice as often as tuners." Please provide all documents that support this statement.

RESPONSE: DMX incorporates herein by reference its General  
Objection 6.

CONFIDENTIAL RIAA

50. Page 37, ¶ 95: Mr. Rubinstein states that: "Beginning around May of 1992, I engaged in discussions with two recording companies -- Time-Warner and Sony Music -- that were interested in acquiring a minority shareholder interest in DMX." Please provide all documents supporting this statement, including, but not limited to, documents reflecting those discussions.

RESPONSE: DMX currently believes that it has no documents responsive to this request.

51. Page 37, ¶ 96: Mr. Rubinstein states that: "As an express condition of any investment opportunity, Time-Warner and Sony Music said that they would require DMX to sign a performance rights license providing royalties for the performance of their copyrighted sound recordings." Please provide all documents supporting this statement, including, but not limited to, those containing such a "require[ment]."

RESPONSE: DMX currently believes that it has no documents responsive to this request.

52. Page 37, ¶ 97: Mr. Rubinstein states that: "These recording companies provided me with a draft performance license that I was told was agreed to by both companies and that both companies considered to be fair." Please provide all documents supporting this statement, including, but not limited to, that "draft."

RESPONSE: DMX currently believes that it has no documents responsive to this request.

53. Page 37, ¶ 98: Mr. Rubinstein states that: "To the contrary, it was my understanding that this license was to be separate and apart from any other return on investment to these companies." Please provide all documents supporting this statement, including, but not limited to, those that reflect this "understanding."

RESPONSE: DMX currently believes that it has no documents responsive to this request.

54. Page 38, ¶ 100: Mr. Rubinstein states that: "The license as originally proposed was for a 25-year term, but had a clause stating that if legislation passed enacting a performance right, the royalty would be the higher of the two percent license rate or the rate enacted by statute." Please provide all documents supporting this statement, including, but not limited to, "the license as originally proposed."



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RESPONSE: DMX currently believes that it has no documents responsive to this request.

55. Page 38, ¶ 100: Mr. Rubinstein states that: "I replied that I would agree either to two percent or the statutory rate, but would not agree to a contingency." Please provide all documents supporting this statement, including, but not limited to, the "reply."

RESPONSE: DMX currently believes that it has no documents responsive to this request.

56. Page 38, ¶ 100: Mr. Rubinstein states that: "The companies responded by agreeing to lock in the two percent (2%) rate over the 25-year term without regard to any legislated rate." Please provide all documents supporting this statement, including, but not limited to, the companies' response.

RESPONSE: DMX currently believes that it has no documents responsive to this request.

Douglas G. Talley

57. Page 4: Mr. Talley states that: "For \$9.95 per month, Digital Planet subscribers could have access to 26 different channels offering a variety of music formats. Subscribers used a special tuner to receive and descramble the digital music service." Please provide all documents that support this statement.

RESPONSE: DMX will produce a responsive Digital Planet program guide. To the best of their present knowledge, neither DMX nor Mr. Talley has any other responsive documents.

58. Page 4: Mr. Talley states that: "Digital Planet offered a wide variety of artists and programming, both popular and lesser known. For example, the 'Stars' channel offered one-hour blocks of music featuring the 'best of' popular artists, such as Michael Jackson and U2. The 'Sprouts' channel featured children's programming by artists such as P.J. Swift and Pickleberry Pie. Digital Planet subscribers received a monthly guide to upcoming programming." Please provide all documents that support this statement.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

59. Page 4: Mr. Talley states that: "Digital Planet reached 10,000 subscribers. We estimated that we needed approximately 400,000 subscribers to reach the break-even point." Please provide all documents that support this statement, including, but not limited to, those that contain this "estimate" and all market analyses and projections and business plans containing an analysis of the number of subscribers necessary to reach profitability.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

60. Page 4: Mr. Talley states that: "Digital Planet was launched with a \$25 million initial investment raised from private venture capital funds. We invested about half of that initial \$25 million in the research, development, and purchase of new technology. In addition to this substantial investment in technology development and infrastructure, it took significant funds to maintain and promote the digital music service." Please provide all documents that support this statement.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

61. Page 4-5: Mr. Talley states that: "Marketing and advertising was the largest line item in Digital Planet's annual budget. The second largest line item was the cost of digital transmission, which is very expensive. Digital Planet also had to purchase and maintain a library of sound recordings. Plus, we had to pay music licensing fees to ASCAP, BMI and SESAC, as well as payroll and general overhead expenses." Please provide all documents that support this statement, including, but not limited to, Digital Planet's annual budget.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

62. Page 5: Mr. Talley states that: "We estimated that we would have needed at least an additional \$35 million (i.e., a minimum \$60 million total investment) to fund fully the start-up needs of the Digital Planet venture." Please provide all documents that support this statement, including, but not limited to, all those that contain that estimate.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

63. Page 6: Mr. Talley states that: "I understand that HBO's premium cable channel budgets \$60 to acquire and keep each subscriber." Please provide all documents on which this understanding is based.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

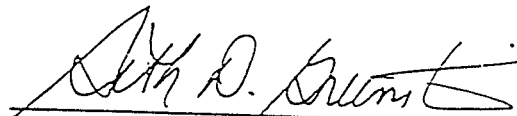
64. Page 6: Mr. Talley states that: "In comparison, Digital Planet could only afford to budget about \$20 per subscriber." Please provide all documents that support this statement, including, but not limited to, Digital Planet's budget, financial reports, market substantiating this statement.

RESPONSE: To the best of their present knowledge, neither DMX nor Mr. Talley has any responsive documents.

65. Page 6: Mr. Talley states that: "Voices within the recording industry have recognized the promotional value of

digital music subscription services . . . . Digital music subscription services present effective promotional and programming opportunities that conventional broadcast radio cannot." Please provide all documents that support this statement.

RESPONSE: Responsive documents previously have been produced as Exhibits 31-34 and 36. To the best of their present knowledge, neither DMX nor Mr. Talley has any other responsive documents.



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Date: October 10, 1996

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 1996, a copy of DMX Inc.'s Response to RIAA's First Request For Documents, was served upon the following:

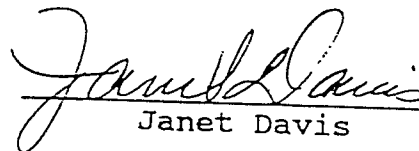
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